

Competence of Counsel and the State Courts

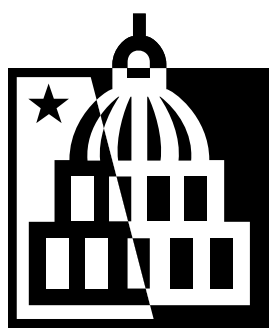


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In a climate of intensifying debate on capital punishment, the Innocence Protection Act (Sen. 486, H.R. 912) would attempt to improve the quality of legal representation in capital cases and ensure access to DNA evidence. It has gained attention since it was introduced in the last Congress.

The competent counsel issue, a major part of this legislation, is of pre-eminent concern to the state courts, since that is the venue where most death penalty proceedings take place. This puts a greater responsibility on state courts to ensure adequate defense of indigent defendants charged in capital crimes, not only in the appellate and



Watch on Washington

cause of problems other than faulty physical evidence, such as poor legal representation, mistaken identifications, unreliable testimony of informants, police or prosecutorial misconduct, and others. In those instances, the justice system relies on a properly functioning adversarial system in which a competent defense lawyer properly scrutinizes the state's case, consults with the client, conducts an in-

vestigation, obtains expert defense witnesses, and vigorously challenges the state's case. During this period, the media have publicized atrocious examples in which the quality of counsel in capital case proceedings has been found wanting. For example:

□ In 1992 George McFarland's attorney admitted to sleeping during parts of his trial. A judge permitted the trial to go on, saying, "The Constitution guarantees the right to an attorney; it doesn't say the lawyer has to be awake." McFarland is currently on death row in Texas.

□ In Georgia, a solo practitioner who had never tried a capital case defended Gary Nelson. That court-appointed lawyer, who was struggling with his own divorce and bankruptcy, was paid between \$15 and \$20 an hour to defend Mr. Nelson. Requests from the defense lawyer for an investigator and co-counsel were denied in the course of the trial. A prosecution expert opined that a hair from the victim's body could have come from Mr. Nelson. This and other questionable circumstantial evidence was enough to convict Mr. Nelson. During postconviction proceedings, a respected Atlanta law firm took over his appeal and was able to have all charges cleared and obtain Mr. Nelson's release. He had erroneously spent 11 years on death row.

□ Ronald Keith Williamson spent 9 years on death row for the rape and murder of a young woman. Mr. Williamson, who suffers from manic depression, was convicted on the basis of testimony from an unreliable witness. He was defended by a lawyer who had never tried a capital case before and refused

to meet with Mr. Williamson alone. In 1997 federal courts overturned Mr. Williamson's conviction because of ineffectiveness of counsel. He was released in 1999.

CCJ ACTION

In response to the recent activity surrounding the issue of ineffective assistance of counsel in death penalty cases, the Conference of Chief Justices (CCJ) has been busy conferring and developing strategies to influence the debate in Washington. At its 2001 annual meeting in Seattle, CCJ approved a resolution that supported the funding of capital case defender programs but opposed attempts to impose on state courts federal standards related to competence of counsel. (Resolution 14, adopted by the State-Federal Relations Committee of CCJ in Seattle, Washington, at its 25th annual meeting, July 30, 2001.)

In addition, CCJ urged that any federal grant program established to support counsel competence standards should follow the overall outlines of the very successful federally funded Court Improvement Program (CIP), which is run by the highest court in each state.

CCJ asked the National Center for State Courts (NCSC) to survey the death penalty states to examine the competence-of-counsel standards currently in place. The survey found (for example) that some states, notably Ohio and Indiana, have taken major strides in developing an extensive process to ensure competent counsel in capital cases. California and New York also have well-funded public defenders' offices with experience in handling capital cases. Even Texas, a state that historically has had an underfunded and decentralized public defender system, recently approved a law that will set up minimum standards for attorneys as well as provide \$20 million in funding to counties to provide services. NCSC's survey on competence of counsel is available from its Information Resource Center and can be viewed on its Web site at www.ncsonline.org.

RECENT CONGRESSIONAL ACTIVITY

Senator Patrick Leahy (D-Vt.), chair of the Senate Judiciary Committee, held a hearing in early summer on his legislation (Sen. 486) that aims to improve

the quality of counsel in capital cases. Perhaps signaling the importance Senator Leahy assigns to this issue, it was the first hearing he had held since taking the gavel from outgoing chair Orrin Hatch (R-Utah). The bill would require the 38 death penalty states to meet certain criteria to qualify for the \$400 million in federal incarceration grants. A commission of 9 members, with at least 2 members from CCJ, would draft the federal standards. Under the bill, each state would be required to establish a central, independent body to appoint lawyers for indigents in capital cases and to pay attorneys a "reasonable" hourly rate as well as administrative costs.

Senator Leahy's legislation would authorize capital defense grants to public and private organizations to help train and recruit qualified lawyers. This approach is similar to the now-defunct Death Penalty Resource Centers that lost congressional funding in 1995. Most observers agree that the centers were perhaps victims of their own success, given that they were able to get many of their clients released from death row. Experts wonder how long Congress would support such a process this time.

Following CCJ's directive, the NCSC Government Relations Office staff is currently drafting an amendment to Senate Bill 486/House Bill 912 that would allow the highest court in a state to voluntarily draft competent counsel standards using the CIP as a model. The amendment, which would authorize federal funds for this purpose, will be presented to congressional staff later this year.

Prospects for passage of Senate Bill 486/House Bill 912 are not certain. In the House, the Innocence Protection Act (H.R. 912) has 210 co-sponsors, close to the 218 required for it to be brought up on the House floor without a hearing. Senator Hatch remains opposed to the competence-of-counsel standards section of the legislation. "The provisions (of Sen. 486) are harmful to the efficient administration of justice; they are harmful to the rights of the states to order their own affairs; and above all, they are harmful to the victims and their families, who are entitled to fair and speedy justice being meted out to the perpetrators of these heinous crimes," stated Senator Hatch during a congressional hearing.

● The NCSC Government Relations Office has prepared an in-depth analysis of Senate Bill 486/House Bill 912 to show how it will affect state courts. To obtain a copy, contact José Dimas, 703-841-5610; e-mail: jdimas@ncsc.dni.us. ■

Most wrongful convictions occur because of problems other than faulty physical evidence, such as poor legal representation, mistaken identifications, unreliable testimony of informants, police or prosecutorial misconduct, and others.

postconviction stages but also in representation at pretrial and trial proceedings. In addition, issues of equality, fairness, integrity, and public trust surround the death penalty debate and affect the public's perception of state courts.

Recently, DNA evidence has played a big role in exonerating inmates from death row by scientifically demonstrating that they were wrongly convicted. Although DNA evidence has revealed a few wrongful convictions, there is typically scant evidence to be examined. Most wrongful convictions occur be-

San Jose hosts national court conference

More than 150 court leaders from metropolitan areas throughout the United States participated in the 39th annual meeting of the National Conference of Metropolitan Courts on October 11–12 in San Jose. Topics discussed at the conference included labor relations for courts as employers, technology for paperless courts, digital libraries of the future,



judicial elections and independence, and a national perspective on probation services. Chief Justice Ronald M. George (left) and Jack Komar, Judge of the Superior Court of Santa Clara County and NCMC President, responded to participants' questions after the Chief's opening address.

Education & Development

AOC Holds Grant Conference

The Administrative Office of the Courts (AOC) hosted a conference for court grant writers on November 7–8 in Redwood City. The conference was organized into one general session and two training workshops that provided practical information for courts on how to secure grants from public and private funding sources.

The general session allowed grant writers and grant seekers from superior courts to meet one another, learn about grant developments at the state level, hear about new grant-seeking resources, and help build an agenda for AOC grant services to the courts.

One of the training workshops was a four-hour classroom-style session on basic grant writing for those who might have already written a grant proposal and who had an elementary understanding of the grant process. It included information on how to be successful in the grant process and how to research funding sources. In addition, the training included basic budget development, components of a proposal, writing a proposal, and tips for success.

The other workshop was a six-hour session on beginning grant writing for those unfamiliar with the grant process. Participants were given in-depth information on the process and how to work with a funding agency, and they learned how to analyze a request for proposals.

Leading the grant training sessions was Sharon McCuen, a private consultant with 24 years of experience in grant writing and grant management. She is a former dean of research and development at American River College in Sacramento and has conducted training sessions at numerous colleges, universities, and government agencies. Her government clients include the Department of Justice, Department of Fish and Game, Death Valley National Park, California Conservation Corps, and Superior Court of Nevada County.

● For information or materials from the conference, contact Lucy Smallsreed, 415-865-7705; e-mail: lucy.smallsreed@jud.ca.gov.

Beyond the Bench Focuses On Child Welfare

Beyond the Bench XIII welcomed nearly 1,000 attendees to Monterey on December 5–7, making the gathering one of the largest ever organized by the Administrative Office of the Courts. This

year's conference had the theme "Investing in Our Children for a Lifetime of Returns." It offered multidisciplinary training focused on child welfare and on improving California's handling of cases involving families and children.

Beyond the Bench kicked off with an opening dinner and an appearance by keynote speaker Stephanie Coontz, a professor of history and families studies at Evergreen State College in Olympia, Washington. Professor Coontz's presentation was titled "Ozzie and Harriet Don't Live Here Anymore: Coming to Terms With America's Changing Families." Other conference speakers and their presentations included forensic linguist Anne Graffam Walker, Ph.D., "Dangerous Assumptions When We Question Children"; Superior Court of San Mateo County Commissioner Patricia Bresee, "New Cases, Statutes, Rules, and Forms"; and Al and Jane Nakatani, founders of Honor Thy Children, Inc. (a nonprofit corporation committed to maintaining and developing educational and other community activities that promote the safe passage of children to adulthood), "Honor Thy Children: Promoting the Acceptance of Human Diversity Through the Understanding and Management of Human and Self-Denigration."

The conference featured more than 25 workshops on topics such as child welfare, child support, confidentiality and the media, adoption issues, youth courts, foster parents, and guardianships.

For the second straight year, organizers offered a preconference symposium on trial skills for attorneys, which gave practical instruction on preparing for the examination of expert witnesses. Additional symposia included presentations on domestic violence and on relations between juvenile courts and child welfare agencies.

● For information, contact Christopher Wu, 415-865-7721; e-mail: christopher.wu@jud.ca.gov.

RESOURCES

Courts Improving Access for Disabled

A new booklet for court administrators, *Disability Fairness: Guidelines for Judicial Officers*, provides a concise yet comprehensive overview of the requirements of the Americans With Disabilities Act and rule 989.3 of

the California Rules of Court. It presents mechanisms that can be used by disabled lawyers, parties, witnesses, jurors, and others to request accommodations in order to gain access to the court. The booklet helps the reader assess a court's potential communication barriers by asking questions such as "Does your court have an ADA coordinator?" and "Are there any physical barriers to courtroom facilities?"

The Judicial Council's Access and Fairness Advisory Committee produced the booklet with assistance from the planning and research unit of the Superior Court of Los Angeles County.

● For more information, contact Scott Gardner, 415-865-7545; e-mail: scott.gardner@jud.ca.gov. To obtain copies of *Disability Fairness: Guidelines for Judicial Officers*, contact the AOC Publications Hotline, 415-865-7738 or 800-900-5980.

Unpublished Appellate Opinions Now Online

Visitors to the official Web site for the California courts can now view unpublished opinions of the state Courts of Appeal by logging on to www.courtinfo.ca.gov/opinions/nonpub.htm. The Supreme Court started posting these unpublished opinions prospectively beginning October 1. (The site has featured *published* opinions of the Courts of Appeal since October 1996.)

The Supreme Court's decision to post unpublished appellate decisions is consistent with a proposal made by the Appellate Process Task Force, which Chief Justice Ronald M. George appointed in 1997 to recommend procedural improvements for the state's Courts of Appeal. The task force's report on this subject is available at www.courtinfo.ca.gov/reference.

Under the state Constitution, the California Supreme Court has the authority to decide which Court of Appeal opinions may be published in the *Official Reports* and therefore cited as precedent in state court proceedings. Rule 976 of the California Rules of Court provides that Court of Appeal opinions may be published only if they satisfy one or more of a prescribed set of "standards of publication," which are designed to provide for the orderly development of decisional law in California.

At the beginning of each unpublished opinion on the Web site, visitors will see rule 977 of the California Rules of Court, which provides that unpublished opinions of the Courts of Appeal may not be cited or relied upon by other courts or parties except in specified circumstances. The unpublished opinions will remain on the site for 60 days.

CJAC 2002: The Business of Justice

The 2002 California Judicial Administration Conference (CJAC) will be held January 28–February 1, 2002, at the Argonaut Hotel in San Francisco. It will bring together court leaders throughout the state, including presiding judges, court executives, and the Judicial Council and its advisory committees, to discuss the business of the courts and the challenges facing judicial administrators.

This year's conference has the theme "Setting the Compass: Business of Justice." It will focus on the business side of the courts, with recognition of the parallels between the roles of court leaders and those of presidents and executive officers in the private sector. The topics of the executive seminars and plenary sessions will include court facilities, court-media relationships, human resources, security, business applications, and regionalization. In addition, CJAC will offer a preconference symposium on Monday and Tuesday that will focus on the planning of budget priorities for fiscal year 2003–2004.

As part of the conference, two luncheons will be held to honor Judicial Council award winners. Chief Justice Ronald M. George will present both the Ralph N. Kleps Awards for Improvement in the Administration of the Courts and the Judicial Council Distinguished Service Awards. Created in 1991 in honor of Ralph N. Kleps, the first administrative director of the California courts, the Kleps awards recognize and honor contributions made by individual courts to the administration of justice. The Distinguished Service Awards—the council's highest individual honors—are presented to judges, court executives, and court leaders who demonstrate extraordinary leadership and make significant contributions to the administration of justice.

CJAC is sponsored by the Judicial Council and is held in conjunction with meetings of the council and its advisory committees. Conference attendees are invited to sit in on many of these meetings.

● For more information, contact Claudia Fernandes, Education Division, 415-865-7799; e-mail: claudia.fernandes@jud.ca.gov.

CSU–Long Beach Offers Interpreting Degree

Recognizing the career potential for interpreters and translators, California State University at Long Beach (CSULB) became the first college in the nation to offer a Bachelor of Arts degree in translation and interpretation studies. There is currently a master's program in translation at the Monterey Institute of International Studies, as well as a few out-of-state programs, but CSULB is the first to offer an undergraduate degree in this field. For now, it offers the degree only in Spanish-English interpreting.

The B.A. program was the result of a collaborative effort among the Administrative Office of the Courts' Court Interpreters Program staff, the California Court Interpreters Association, the Court Interpreters Advisory Panel, and CSULB professor Alexander Rainof.

Courses for the program began on August 27 and are being

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Court Briefs



Senator Bruce McPherson

Lawmaker Offers Support To Courts

On September 24, Senator Bruce McPherson (R-Santa Cruz), chair of the Senate Public Safety Committee, addressed the attendees of a business meeting of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, held in San Jose. During

his address, he pledged his support in examining some key issues that affect the trial courts, including the maintenance and construction of court facilities, competitive salaries for judicial officers, efficiency of court operations, and the need for patience in efforts to further the reforms of Proposition 36.

First Graduates Of Court Certificate Program

The Superior Court of Riverside County honored the first graduates of its Court Certificate Program at a ceremony held on October 19 at the historic courthouse in downtown Riverside. The graduates were 33 court employees from 10 court locations in Riverside County.

The court created the Court Certificate Program in 1999 to

assist employees in career development. Full-time staff members are eligible to participate in the two-year program, which includes 10 classes in the court's Staff Development Program and 4 courses at one of the county's community colleges. Course topics include business law, information systems, customer service, and written communications.

After completing a community college class with a grade of C or better, a student may request reimbursement for books and tuition. Books that are reimbursed become the property of the court and are placed in a library to be used by future students or other staff members who want to brush up on their professional skills.

● For more information, contact Diane Gray, Court Services Director, 909-955-5536.

Final Facilities Report to Sacramento

The Task Force on Trial Court Facilities submitted its final re-

port to the Governor, the Legislature, and the Judicial Council in October. The report recommends that the responsibility for trial court facilities be transferred completely from the counties to the state over a three-year period. This is the final version of an interim report that was released for public comment on April 9 (see the May–June 2001 *Court News*).

The task force considered numerous comments on the interim report and made several revisions. The basic recommendations of the task force, however, remain unchanged—the chief one being that the state should assume full responsibility for California's nearly 500 trial court facilities. Other findings include needs for improvements in security and safety, increased access for the disabled, technology upgrades, and expansion of jury assembly space and meeting areas.

● To view the final report of the task force or a summary of its revisions, visit www2.courtinfo.ca.gov/facilities/.



The Superior Court of Riverside County honored the first graduates of its Court Certificate Program at a ceremony held on October 19 at the historic courthouse in downtown Riverside. Photo: Courtesy of the Superior Court of Riverside County

MILESTONES

The Psychiatric Education and Research (PER) Foundation named **Superior Court of Los Angeles County Judge Harold E. Shabo** its 2001 Patient Advocate. The PER Foundation, which was organized by the Southern California Psychiatric Society, champions mental health projects and educates the public about issues in the field.

The foundation recognized Judge Shabo for his commitment to finding legislative solutions to the problem of criminalizing the mentally ill and for his continuing efforts to educate the public about severe mental illness.

Judge Shabo has helped shape the state laws protecting mentally ill defendants by serving on several county, state, and

national task forces and committees. He is a current member of the Los Angeles County Bar's Juvenile Court Task Force, the California Judges Association's Probate and Mental Health Committee, and the Judicial Council's Probate and Mental Health Advisory Committee.

At the State Bar annual meeting, the bar's family law litigation section named **Superior Court of San Bernardino County Commissioner Michael Gassner** its Judicial Officer of the Year.

As a member of the Center for Judicial Education and Research's (CJER) Family Law Education Committee, Commissioner Gassner has been active in CJER's curriculum development project, the development of the Administrative Office of the Courts' (AOC) online self-help center and new Center for Families, Children & the Courts Web site, and the simplification and translation of family law forms.

At its annual meeting, the California State Bar presented **Justice Norman L. Epstein, Court of Appeal, Second Appellate District**, with the Witkin Medal Award—an honor that Justice Epstein instituted nine years ago.

Named after legendary scholar Bernard E. Witkin, the Witkin Medal Award recognizes judges, attorneys, and legal scholars whose lifetime body of work has altered the legal landscape. Previous winners include Mr. Witkin (the first recipient) and the late Supreme Court Justice Stanley Mosk.

Justice Epstein, a recent appointee to the Judicial Council

of California, was appointed to the appellate bench by former Governor George Deukmejian in 1990. The Los Angeles native has written and lectured extensively on civil law and procedure and on criminal law. He was a lecturer at the University of Southern California Law Center and served on numerous bench and bar committees. He is a former dean of the California Judicial College and has been a faculty member of the college since 1978.

Superior Court of Fresno County Judge Gary D. Hoff received the Central California Legal Services (CCLS) Award. It recognizes individuals who provide leadership and support for CCLS and for its services to the community. CCLS works to increase public access to the judicial system.

Judge Hoff is actively involved in educational programs that benefit the community. He supported the court's creation of the ACTION (After Criminal, Traffic, Infraction, One-Stop Network) Center, which assists defendants in the processing of court orders, including fines, restitution and fees, and referrals to other local agencies. He is involved in the court's aggressive early intervention program Keep Kids in School, which works to prevent truancy. In addition, he is vice-president of the Access to Justice Commission, which is sponsored by the State Bar and the Judicial Council.

Governor Gray Davis appointed **Alice Vilardi** as a judge of the Superior Court of Alameda County. She is the first AOC staff member to be elevated to the bench.

Since 1999, Judge Vilardi has served as managing attorney in the AOC's Office of the General Counsel, where she managed litigation involving the trial courts, judicial officers, and court employees throughout the state. She also supervised the AOC's complex civil litigation pilot program, the Commission on Judicial Performance insurance program, and the staff for the Judicial Council's Access and Fairness Advisory Committee.

From 1995 to 1999, Judge Vilardi was engaged in private practice in Alameda County, where she provided advice to public agencies on a full range of government law issues. She previously served as general counsel to the East Bay Municipal Utility District, as city attorney of Hayward, and as deputy public defender in Santa Clara County.

At the annual meeting of the State Bar of California, the bar's public law section honored **Jayne W. Williams** as its 2001 Public Lawyer of the Year.

Each year, the public law section selects its award recipient from those nominated by members of the section, the State Bar, and the public at large. The award recognizes the outstanding work that public lawyers do every day.

Jayne Williams is a member of the Meyers, Nave, Riback, Silver & Wilson law firm's Public Law Department. She currently serves as city attorney for Suisun City, interim city attorney for Merced, and president of the City Attorneys Department of the League of California Cities. Before joining Meyers Nave, Ms. Williams served as city attorney of Oakland from 1987 to 2000. ■

CSU—Long Beach

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taught by Professor Rainof. He will instruct students on (among other skills) accurate translation of medical and scientific documents, business correspondence, contracts, and other legal documents. As of October, seven students had declared translation and interpretation studies as their major.

● For more information about CSULB's B.A. program in translation and interpretation studies, visit www.csulb.edu/colleges/cla/rgrll. ■